

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4682 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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A T TRIVEDI & ORS.

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR PV HATHI for Petitioners  
MR SAMIR DAVE for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/11/96

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The petitioners, who were recruited in the cooperative department of the former State of Saurashtra in class III cadre in the pay scale of Rs.150-250 and later on they were absorbed in the State of Bombay and ultimately in the State of Gujarat on its formation, filed this petition before this Court with a grievance

that their names may be incorporated in the seniority list of class II and class I officers of Gujarat Cooperative Service as if they were not reverted in the year 1961 and on the basis of their original promotion given in the year 1959 as class II officers. Further request has been made for direction to respondent No.3, State of Maharashtra, to finalize the gradation list issued under the order dated 31st March 1978 with all consequential benefits.

3. The facts of the case which are necessary for disposal of this writ petition, in brief, are that the petitioners were recruited in the cooperative department in the former State of Saurashtra in the class III officer cadre in the pay scale of rs.150-250 which came to be merged in the state of Bombay on 1.11.56. As the petitioners were the employees of the State of Saurashtra which merged in the State of Bombay, their service conditions could not have been varied to their disadvantage without prior approval of the Central Government. The Government of Bombay framed above Rules under Article 309 read with proviso to Section 115 of the State Reorganization Act, 1956. A gradation list was to be prepared by the Government of Bombay of the allocated employees absorbed from different states like Bombay, Hyderabad, Saurashtra and Kutch. Rule 9 of the Allocated Government Servants (Absorption, Seniority, Pay & Allowance) Rules 1957 makes a provision also that the interse seniority of the allocated employees cannot be disturbed. The Government of Bombay was firstly required to equate the different posts which were existing in different states and which came to be merged with the Bombay State and then to prepare the common gradation list of the posts absorbed as on 1.11.56. The Government of Bombay equated the cadres drawing different pay scales for the purpose of absorption and gradation list by treating Ex-Saurashtra employees in the cadres of Rs.150-250, Rs.140-180 and Rs.125-160 at par for the purpose of gradation list. Under the order dated 24th December 1958 of the Registrar, Cooperative Department, Bombay State, the petitioners were absorbed in the grade of Rs.150-200 though they were in the scale of Rs.150-250 in the Ex-Saurashtra State. So, the petitioners were absorbed in the lower cadre. The petitioners were promoted to class II post by the Government of Bombay under the order dated 26th October 1959. With effect from 1.5.60 Gujarat State was formed. On that date, the petitioners were holding the post of class II officers. On formation of Gujarat State, the petitioners were allocated to the Gujarat State.

4. The first gradation list of class III officers showing position as on 1.11.66, was issued on 16.7.60. Objections were invited against the list and some of the petitioners raised their objections against the absorption and equation on the lower post. Their contention was that they should have been placed in the pay scale of Rs.200-300 which was prevailing in the Bombay State or in any case on the top of the persons who were holding the post in the grade of Rs.150-200. This gradation and absorption in the lower scale affected their service conditions. The State of Gujarat has promptly acted upon the aforesaid provisional gradation list and taking the petitioners' position therein, they were ordered to be reverted from class II to class III in the year 1961. Against this reversion, the petitioners raised objections that the said list was only a provisional list and their objections raised against that list are still pending and as such, it should not be given effect to. However, the State of Gujarat has, instead of redressing their grievances, has further added fuel to the fire and number of other persons though junior but shown senior in the aforesaid list, have been given promotions. However, the petitioners came to be promoted to the cadre of class II officers in the year 1963 but the petitioners had to suffer the break in service in class II as well as lower fixation of pay for a period of two years. The Central Government has intervened in the matter and issued directions that the person drawing higher pay in the former State should be treated senior to those belonging to lower grade and accordingly on 31st March 1978, the Commissioner of the Corporation, Maharashtra State, Poona, issued another order in the line of directions of the Central Government and the petitioners' seniority came to be restored as was contemplated by them in the objections against the provisional gradation list. So as regards the grievance of the petitioners and their absorption in the equal grade and their seniority came to an end on 31st March 1978. However, the gradation list of 31st March 1978 was not finalized by the Government of Maharashtra even up to the date of filing of this petition. However the petitioners allege that the seniority of the petitioners in class II is maintained as it is without giving effect to the order of 1978 as if they were promoted in 1963 and not in 1959 when their juniors were wrongly promoted on reversion of the petitioners. It is alleged that promptly, as it acted earlier, the Government of Gujarat has not acted, may be for the reasons that the persons who were found junior to the petitioners were in charge of the establishment section of the Cooperative Department. The Government of Gujarat issued a

provisional seniority list of class I & II officers under the order dated 17th August 1981, but the names of the petitioners were not included therein though they have been given seniority by the State of Maharashtra in the provisional gradation list dated 31st March 1978. The petitioners made representation against this seniority list but nothing has been done and hence this Special Civil Application by the petitioners before this Court.

5. This petition was admitted on 17th December 1982 and by way of interim relief, the Court has made order the the Maharashtra Government finalize the gradation list as expeditiously as possible but not later than 31st January 1983. It has further been ordered that if any promotional avenue opens in the Department in the State of Gujarat during this period the Government of Gujarat shall operate the gradation list as revised by the Maharashtra Government vide Resolution dated 31st March 1978 and the promotions so accorded will be ad hoc and subject to the decision of the petition. It appears that the directions of the Court were not complied with and the petitioners filed Contempt Petition being Misc.Civil Application No.707 of 1983 before this Court. Unconditional apology for non compliance of the directions of this Court was given and five of the petitioners came to be promoted to the post of Joint Registrar in the Cooperative Department under the order dated 30th November 1983 as a result thereof notice has been discharged in the Contempt Petition on 1.12.83. The petitioners have already retired in the year 1986. A complete final gradation list of the non gazette class I & II employees has been published by the State of Maharashtra of the employees absorbed as on 1.11.56, on 2.8.93. The petitioners were found to be senior over their juniors who were promoted in the year 1961 when they were reverted. Those persons, during the pendency of this Special Civil Application, have been given further promotion to the class I and super class I post. The petitioners have filed further affidavit in this case on 26th July 1996. Not only this, the petitioners have given out further details and filed documents in this case and I consider it necessary to make reference of the same. In the final gradation list published by the Maharashtra Government of the allocated government servants for different states, the names of the petitioners have been shown at Sr.No.53, 75, 140, 147, 160 and 296 compared to the earlier erroneous provisional list. Pursuant to the said final gradation list published in 1993 of the State of Maharashtra, the Registrar, Cooperative Societies, Gujarat State, issued a Circular dated 21st September 1996 and revised the

seniority list of non gazetted employees allocated to Gujarat State. The petitioners have been shown at Sr.No.38, 40 etc. and now remains the question only of giving of consequential changes in the seniority list of class I and II officers to which posts the petitioners were promoted on the basis of their old wrongly prepared seniority list which, as stated earlier has already been revised.

6. None of the respondents have replied to this Special Civil Application and as such, the averments made therein stand uncontroverted. The facts of this case give out a sorry state of affairs which are prevailing in the State of Gujarat. The facts are also shocking that how the State of Gujarat has taken the matter of allocated employees from different princely states. Not only the State of Gujarat, but the State of Maharashtra also to certain extent proceeded on the same lines and it has taken a long time to finalize the gradation list of the allocated employees. The State of Maharashtra has taken years to finalize the gradation list, but worst thing is that though the State of Maharashtra has finalized the gradation list on 2.8.93, in which the petitioners names have been placed at higher number, the State of Gujarat in its turn has taken a long time to revise the seniority list of non gazetted employees allocated to it. It has taken more than three years to undergo this exercise. While passing the order adverse to the petitioners on the basis of incorrect provisional or gradation list, the State of Gujarat had acted with all promptness and without waiting for finalization of the gradation list, the petitioners have been reverted immediately, and the facts in this respect have already been stated above. Not only this, it has acted upon that list promptly and many of the persons who were otherwise junior to the petitioners have been given promotion. The petitioners knocked the doors of this Court and this Court has passed interim order but still the State of Maharashtra has taken a long time of about eleven years to make final gradation list. Though in the year 1978 the provisional gradation list earlier issued has been corrected and the petitioners have been restored to their position as they should have been, but the State of Gujarat has not acted as promptly as it should have and in fact as it acted earlier while restraining promotion to the petitioners to class II for two years period by regularizing the period of reversion. No explanation whatsoever is forth coming from the State of Gujarat nor any justification as to why the petitioners have not been restored to their original position of promotion when the gradation list of the year 1961 has been corrected in the

year 1978. Not only this, consequential changes in the seniority list of class II and I officers have also not been made and that too till this date. It is a case where litigation is pending before this Court and even then the State of Gujarat has proceeded in most casual manner in the matter. The State of Gujarat has taken the litigations pending in this Court to be a mere formality or of no consequences and that is the position also with the orders made by this Court. When the matter is sub-judice and pending this writ petition orders have been made and the petitioners have been given their due seniority, but still the consequential effect to those orders has not been given nor the consequential benefits, for which the petitioners were entitled. I do not find any justification in this inaction or omission on the part of the State of Gujarat as the petitioners who served the Government are sufferers. It is to be noticed that the petitioners have retired in the year 1986 and more than 10 years have passed and on giving effect to their improved position in the seniority list, they would have got more than what they are receiving as pension, gratuity, and other retirementary benefits. The petitioners have suffered all this agony not only because of any fault on their part, but because of slackness and casual approach on the part of the State of Maharashtra and the State of Gujarat. It is a fit case where exemplary costs should be imposed. The petitioners have given out in writing that they are now entitled to the consequential benefits, namely benefits like restoration of seniority in class II, refixation of the date of promotion in class II, restoration of seniority in class I post and refixation of their promotion in that class, super time scale of class I to which post the petitioners came to be promoted pending this petition, refixation of pay on the basis of deemed date of promotions in the cadre of class I & II and super time scale, refixation of pension and other retirementary benefits, payment of arrears of fixation of salary, pension and other retirementary benefits etc. These consequential benefits should have been given by the respondent State of Gujarat on its own immediately, but it has not done so.

7. In the result, this writ petition succeeds and the respondent State of Gujarat is hereby directed to give the petitioners all the benefits aforesaid within a period of four months from the date of receipt of certified copy of this order. Necessary order in this respect may be made within aforesaid period and actual payment thereof should be made within a period of two months next. The petitioners shall be entitled for the interest on the arrears of fixation of salary on the

basis of deemed date of promotion to different classes as well as the revised pension, gratuity, encashment of leave, computation of pension and other retirementary benefits at the rate of 12% p.a. from the date of filing of this Special Civil Application, i.e. 5th October 1982 (to make it round figure, from 1st October 1982). The respondent State of Maharashtra is directed to pay to the petitioners, by way of cost of this petition Rs.500/- to each petitioner and the respondent State of Gujarat is directed to pay, by way of cost of this petition, Rs.1,000/- to each petitioner. This amount of cost to be paid by the respondent States within a period of one month from the date of receipt of certified copy of this order and the compliance thereof may be produced on record of this case. Rule made absolute in aforesaid terms with no order as to costs.

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(sunil)